IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12105 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRIMARY HEALTH CENTRE-THRO. DIST.HEALTH OFFICER A'BAD - Petitioner(s)

Versus

CHELAJI CHANDAJI BARAIYA - Respondent(s)

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Appearance :

MR HARSHADRAY A DAVE for Petitioner(s) : 1,
MS HINA DESAI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 19/04/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.H.A.Dave, appearing on behalf of petitioner and learned Advocate, Ms.Hina Desai, appearing on behalf of

respondent.

2. This matter has been notified in the final hearing Board at Serial No.32 of this Court. On the request of learned Advocate, Ms.Hina Desai, that identical matter has already been dismissed by this Court and, therefore, same order is required to be passed in the present matter since the facts in both the cases are identical. Therefore, at the request of learned Advocates appearing for the parties, present matter is taken up for final hearing today.

3. In the present petition, the award passed by Labour Court, Ahmedabad in Reference No.1225 of 1991 dated 30th December,2002 is challenged. The Labour Court, Ahmedabad has partly allowed the reference and directed the petitioner to examine the age of the respondent – workman and to pay 50% back wages of interim period, and to reinstate the workman concerned. If the workman

has already reached the age of superannuation, then, he entitled to 50% back wages upto the age of superannuation.

4. This Court has passed the order on 9th December,2003, which is quoted as under :

> “1. Heard the learned Advocates for the parties.
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> 2. Ms.Hina Desai, learned Advocate for the respondent-workman, produced on record the documents referred to by the learned Judge of the Labour Court, Ahmedabad, vide Exh.8 bearing Mark 8/1 to 8/4, namely, application made by the respondent-workman for the employment, forwarding letter of the officer of the Primary Health Centre, Kuha, letter alleged to have been written by the District Panchayat, Ahmedabad calling the

respondent-workman for interview and joining report of the respondent-workman.

3. Significantly, the appointment order is missing in the sequence. If the respondent-workman could preserve these documents, there is no reason why the respondent-workman could not preserve the appointment order and could not produce before the learned Judge of the Labour Court. In fact, at one stage, the respondent has deposed before the Labour Court that he has produced the appointment order, but then, it was found that the same was not produced. In view of that, ad interim relief granted earlier on 29th August, 2003 to continue till the final disposal of the matter."

5. Learned Advocate, Ms.Hina Desai, submitted that identical order has been passed by the Labour Court against the same petitioner, which award has been challenged by the petitioner in SCA No.12106 of 2003. In that case, the workman was Manguben Ganpatbhai Vaghela and in the present case, workman is Chelaji Chandaji Baraiya. She also submitted that the petitioner has challenged the award passed by the Labour Court in favour of Manguben Ganpatbhai Vaghela in SCA No.12106 of 2003, wherein, this Court by an order dated 27th December,2004 has rejected the petition. She also submitted that identical question has been examined in both the cases by the Labour Court and same question has been examined by this Court. Therefore, she submitted that in light of the reasons given in SCA No.12106 of 2003 by this Court by order dated 27th December,2004, this petition can be disposed of accordingly.

6. Learned Advocate, Mr.H.A.Dave, appearing for the petitioner submitted that same points are required to be argued before this Court in the present case. Except that, there is no contention is required to be raised by the petitioner.

7. In view of these facts and considering the reasoning given by this Court in SCA No.12106 of 2003 in case of Manguben Ganpatbhai Vaghela by an order dated 27th December,2004, this petition is accordingly dismissed. Reasons given in the said order dated 27th December,2004 by this Court in SCA No.12106 of 2003 will apply to this case also.

8. Learned Advocate, Ms.Desai, submitted that against the order dated 27th December,2004 passed in SCA No.12106 of 2003, Letters Patent Appeal was preferred by the petitioner, wherein, there was delay and that delay application being Civil Application No.7972 of 2005 has been rejected by

the Division Bench of this Court on 3rd February,2006.

9. In view of above, present petition is dismissed. Rule discharged. Interim relief, if any, stands vacated. Copy of order passed by this Court in SCA No.12106 of 2003 dated 27th December,2004 (Coram : Shri Akil Kureshi,J.) is attached to said order.

(H.K.RATHOD,J.)

(vipul)